

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 22224 of 2018 (O&M)

Date of decision: 10.01.2019.

Ram Karan and others

..... Petitioners.

Versus

State of Haryana and others

..... Respondents.

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Vikram Singh, Advocate, for the petitioners.

Mr. S.S. Kharb, Advocate, for the intervener(s).

ANUPINDER SINGH GREWAL, J.

The petitioners have challenged the order dated 07.08.2018 (Annexure P13) passed by the Deputy Commissioner, Sonapat (respondent No.2) whereby the application of the petitioners to purchase the disputed land has been rejected.

The Gram Panchayat, Village Ahulana, Tehsil Gohana, District Sonapat is stated to have filed an application for eviction of the petitioners from the 'abadi deh' land under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'). The application was dismissed by the Assistant Collector 1st Grade, Gohana on 03.04.1979 (Annexure P1). The appeal preferred by the Gram Panchayat thereagainst was allowed by the Deputy Commissioner-cum-Collector vide order dated 23.09.1980 (Annexure P2). The writ petition bearing No.4334 of 1980 preferred by the petitioners against the order dated 23.09.1980 was also

dismissed by this Court on 09.03.1994 (Annexure P3). The appeal, i.e. LPA No.1302 of 1994, preferred by the petitioners against the order dated 09.03.1994 was allowed by the Hon'ble Division Bench of this Court on 16.09.2004 and the case was remanded to the Collector, Sonapat with a direction to decide the appeal filed by the Gram Panchayat afresh after affording adequate opportunity of leading evidence and hearing both the parties. The Collector, Sonapat, vide order dated 04.01.2006, after hearing the parties, allowed the appeal of the Gram Panchayat and set aside the order dated 03.04.1979 (Annexure P1) passed by the Assistant Collector 1st Grade. The petitioners preferred CWP No.5744 of 2006 impugning the order dated 04.01.2006 which was disposed of by this Court with a direction that the petitioners may move an application to the Gram Panchayat for depositing the cost price of the disputed land in terms of the Haryana Government policy dated 16.10.2000 (Annexure P4) and the Gram Panchayat would consider the application of the petitioners in accordance with law and the policy/instructions and the competent authority (Deputy Commissioner) was directed to pass an order in accordance with law and policy thereafter. The petitioners are stated to have moved several applications to the authorities for consideration of their case in terms of the directions of the Court. They preferred representation dated 07.06.2018 (Annexure P11) to the Deputy Commissioner, Sonapat for favourable action in pursuance to the Haryana Government policy/instructions and to fix the sale price of the disputed land and grant of permission/approval for sale of the land which they were willing to purchase. They also sent a legal notice (Annexure P12) to the respondents on 14.06.2018 and on the failure of the respondents to take any action thereon, they preferred CWP No.16303 of

2018 and during the pendency of this petition, respondent No.2 passed the order dated 07.08.2018 (Annexure P13) impugned herein whereby the claim of the petitioners has been rejected on the ground that there is no constructed house on the disputed land and the Gram Panchayat does not want to sell the land in dispute.

Learned counsel for the petitioners has contended that the house of the petitioners has been constructed prior to 1970 which was in dilapidated condition as it could not be renovated due to continuous litigation and this construction was not disputed by the Gram Panchayat right from 1979 till 2009 when the order dated 26.05.2009 was passed. He also contended that the house of the petitioners is on 'abadi deh' land and, therefore, the Gram Panchayat is not entitled to evict the petitioners under the Act.

We have heard learned counsel for the petitioners and have also gone through the documents brought on record.

In the policy/instructions of the Haryana Government dated 16.10.2000 (Annexure P4), the terms and conditions for regularization of the old constructed houses over the panchayat land were set out, which read as under:-

- “(a) Permission will be for the sale of only non-cultivable land of the Panchayat, upon which there is unauthorized possession of Katcha/Pucca house is constructed thereupon.
- (b) Permission can also be granted for the sale of adjoining land of the constructed area to the extent of 25% upto the maximum of 200 Sq. Yards.
- (c) The construction should be prior to 31.3.2000.

- (d) It would be necessary to pass a resolution for the sale of such land by the Gram Panchayat.
- (e) No obstacle should come in the way for the inconvenience of villagers by the sale of such land.
- (f) The market price of such land would be fixed by the concerned Deputy Commissioner in consultation with the Gram Panchayat.”

It is, thus, a pre-requisite that to avail the benefits of the policy/instructions dated 16.10.2000 (Annexure P4), the construction must be prior to 31.03.2000. However, the petitioners were not able to satisfy the authorities below as well as this Court that the construction had been raised before 31.03.2000. As a matter of fact, a perusal of the impugned order dated 07.08.2018 (Annexure P13) reveals that there was no construction of house on the disputed land. The land is being occupied by the petitioners for tying their cattle and parking cart. The land belongs to the Gram Panchayat and is being used for ‘chaupal’. The Sub Divisional Officer (Civil), Gohana had sent his report after inspecting the spot and conducting videography on 24.05.2018. The report indicates the following factual position:-

- “1. On the land in dispute petitioners have not constructed any house and boundary wall. Land in dispute is totally plain. There is no sign of any digging or removing of any foundation.
- 2. One old Gate of Chopal had been installed towards the land in dispute.

3. There is no Kachhi or Packi street between the Chopal and land in dispute.
4. Nearby people have tied Khunta for tying their cattle.
5. Chopal is very old and the same is being fallen and its Malba (Waste material) is lying scattered and a grant of Rs.17 lacs 65 thousand has been received for its new construction from Zila Parishad.”

The Deputy Commissioner, Sonapat (respondent No.2) also inspected the spot on 06.06.2018 in the presence of 39 persons including Ex-Sarpanch Ved and present Sarpanch and Nambardar, as mentioned in the impugned order dated 07.08.2018 (Annexure P13). The relevant extract of the order is reproduced hereunder:

“Map of the spot was prepared. One iron gate of the Chopal opens towards the land in dispute. Chopal is very old and now the proceedings for constructing it new by demolishing the old is being carried out. On the land in dispute Khunta have been dug for tying the cattle. The dimension of the land in dispute East, West, North and South are like 35 feet, 45 feet, 75 feet and 75 feet. Behind to this is pucca house of Om Parkash son of Ram Narain, gate of which opens towards street in south side. In the North side of the land in dispute there is 13 feet wide Pucci Street. The official of Block Office present at the spot was directed that he be sent the certified copy of the resolution No.1 dated 06.02.2012 passed by the Gram Panchayat which has been sent by

the Block Development and Panchayat Officer vide letter No.1783 dated 11.06.2018.”

It is also mentioned in the order that the application of the petitioners was rejected by the Gram Panchayat on 06.02.2012 as it did not want to sell this land at any cost to the petitioners, who are stated to be encroachers thereon.

It may also be noticed that the photographs which the petitioners have attached with the petition as Annexure P4 (colly.) show that it is a vacant land where few buffaloes have been tied while a few persons are sitting on plastic chairs and one of them is smoking ‘hooka’. Thus, the photographs placed on record by the petitioners do not support their case that they had raised construction of the house on the land in question.

In view of the above, the petitioners have not been able to establish that they had raised any construction on the disputed land prior to 31.03.2000 and, therefore, the impugned order dated 07.08.2018 (Annexure P13) rejecting their application does not suffer from any illegality warranting interference in writ jurisdiction.

Consequently, the petition stands dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

10.01.2019
Ramesh

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No